

FACTSHEET

TITLE: **STREET VACATION NO. 04001**, requested by Christ Lutheran Church, to vacate a portion of 43rd Street south of Sumner Street to be used by the adjacent church as parking area.

STAFF RECOMMENDATION: A finding of conformance with the Comprehensive Plan.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 02/04/04
Administrative Action: 02/04/04

RECOMMENDATION: A finding of conformance with the Comprehensive Plan (8-0: Carlson, Krieser, Marvin, Carroll, Taylor, Sunderman, Pearson and Bills-Strand voting 'yes'; Larson absent).

FINDINGS OF FACT:

1. This is a request to vacate approximately one-half block of South 43rd Street south of Sumner Street as part of the petitioner's long range plans for expansion. The petitioner intends to purchase the property proposed to be vacated and use it for parking area and building access. The petitioner will petition to vacate the remaining portion of South 43rd Street north of Franklin Street once they have ownership of the remaining homes on the west side of South 43rd Street. In the meantime, the City will retain a public access easement over the vacated right-of-way to allow continued public access between Sumner and Franklin Streets.
2. The staff recommendation is based upon the "Analysis" as set forth on p.3, concluding that the proposal conforms with the Comprehensive Plan, provided easements are retained for public utilities.
3. The petitioner's testimony is found on p.5.
4. There was no testimony in opposition.
5. On February 4, 2004, the Planning Commission agreed with the staff recommendation and voted 8-0 to find the proposed street vacation to be in conformance with the Comprehensive Plan, with the conditions of approval as set forth on p.3-4.
6. The City Real Estate Division has found that the area should be vacated and deeded to the abutting owner for the nominal amount of \$250.00 at this time, with the balance to be determined upon the vacation of the remainder of that portion of 43rd Street south to Franklin Street (p.12).
7. The City Clerk has determined that the provisions of Chapter 14.20 of the Lincoln Municipal Code have been satisfied.

FACTSHEET PREPARED BY: Jean L. Walker

DATE: April 26, 2004

REVIEWED BY: _____

DATE: April 26, 2004

REFERENCE NUMBER: FS\CC\2004\SAV.04001

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for February 4, 2004 PLANNING COMMISSION MEETING

P.A.S.: Street Vacation #04001
43rd and Sumner Streets

PROPOSAL: Vacate a portion of 43rd Street south of Sumner Street for use by adjacent church as parking area.

LOCATION: 43rd Street, south of Sumner Street

LAND AREA: 9,054 square feet, more or less.

CONCLUSION: The vacation of this portion of 43rd Street conforms to the Comprehensive Plan provided easements are retained for public utilities.

<u>RECOMMENDATION:</u>	Conforms to the Comprehensive Plan
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GENERAL INFORMATION:

LEGAL DESCRIPTION: South 43rd Street between the south right-of-way line of Sumner Street, and the south line of the north half of Lot 4, Block 2, Woods Brothers Bryan Sumner Acres, located in Section 32 T10N R7E, Lancaster County, Nebraska.

SURROUNDING LAND USE AND ZONING:

North:	Single-family residential	R-2 Residential
South:	Single-family residential	R-2 Residential
East:	Christ Lutheran Church	R-2 Residential
West:	Single-family residential	R-2 Residential

COMPREHENSIVE PLAN SPECIFICATIONS: The Land Use Plan identifies this area as Urban Residential. (F 25)

UTILITIES: Aquila has a 2" gas main in the right-of-way that will continue to serve the remaining homes on S. 43rd Street. LES has two street lights along the right-of-way that must be removed. Public Works has sanitary sewer, storm sewer, and water facilities that will remain in use.

TRAFFIC ANALYSIS: South 43rd Street is a local street. Residents currently use it to access Sumner Street to the north and Franklin Street to the south. Should this portion of right-of-way be vacated, it should remain in place to continue providing access to the north for the remaining homes on S. 43rd Street.

ANALYSIS:

1. This is a request to approximately one-half block of South 43rd Street south of Sumner Street. This vacation is part of the Applicant's long range plans for expansion.
2. Applicant intends to purchase this property if vacated, and use it for parking area and building access. Applicant will petition to vacate the remaining portion of South 43rd Street north of Franklin Street once they have ownership of the remaining homes on the west side of S. 43rd Street.
3. The vacation of this street will not create lots without frontage or access to a public street, nor will it create a block length that exceeds 1000'. Applicant is the record owner of all abutting lots. Once this right-of-way is vacated, this right-of-way and the adjacent lots to the west will be incorporated into Applicant's overall parcel.
4. The vacation of this right-of-way will create a dead-end street, and will require a turnaround be constructed and pavement be removed, at a combined cost of \$40,000.

Rather than construct a turnaround, Applicant has proposed to provide a public access and utility easement over the entire vacated area that would allow motorists continued access to Sumner Street. Applicant would reconstruct the street return at Sumner Street to driveway standards. The vacated right-of-way will become a drive aisle with parking on either side. This drive aisle will provide continuous vehicular access from Sumner Street to Franklin Street. Applicant will remove the paving and reconstruct their parking area once they have vacated the remaining portion of South 43rd Street. Applicant should be required to post a bond in the amount determined by the Public Works Department for removal of the existing paving and street return and construction of a driveway return.

5. Aquila, LES, and Public Works all have existing facilities within the area of this vacation, and have requested a permanent easement over the entire vacated area for maintenance of and future additions to these facilities.
6. LES must be contacted if this right-of-way is vacated so they can remove two street lights.

BEFORE THE VACATION REQUEST IS SCHEDULED ON THE CITY COUNCIL AGENDA THE FOLLOWING MUST BE COMPLETED:

- 1.1 Satisfy the provisions of Chapter 14.20 of the Lincoln Municipal Code.
- 1.2 Provide a bond in the amount as determined by the Public Works Department to guarantee the removal of the existing paving and street return at Sumner Street, and to construct a new driveway return in Sumner Street within two (2) years, or until such time as the remaining portion of S. 43rd Street north of Franklin Street is vacated, whichever is sooner.

1.3 Contact LES to schedule the removal of two street lights.

Prepared by:

Greg Czaplewski
Planner

Date: **January 27, 2004**

Applicant: Christ Lutheran Church
4325 Sumner Street
Lincoln, NE 68506
483.7774

Owner: Same as Applicant.

Contact: Olsson Associates
Tim Gergen
1111 Lincoln Mall
Lincoln, NE 68508
474.6311

STREET & ALLEY VACATION NO. 04001

PUBLIC HEARING BEFORE PLANNING COMMISSION:

February 4, 2004

Members present: Carlson, Krieser, Marvin, Carroll, Taylor, Sunderman, Pearson and Bills-Strand; Larson absent.

This application was removed from the Consent Agenda and had separate public hearing at the request of Commissioner Pearson.

Staff recommendation: A finding of conformance with the Comprehensive Plan.

Ex Parte Communications: Carlson indicated that he had a phone conversation with the president of the 40th and A Neighborhood Association, who indicated that they had had conversations with Christ Lutheran Church and that the neighborhood association had taken no position on this application.

Proponents

1. Tim Gergen of Olsson Associates testified on behalf of the petitioner, **Christ Lutheran Church**, to vacate a portion of S. 43rd Street in order to increase the parking for the church. The church is now in need of parking. A lot of the members are parking on the street and on the surrounding neighborhood streets and the church would like to provide more convenience for their patrons. Gergen showed the proposed vacation on the map. The purpose of the street vacation is to allow parking bays on the side of the street and an additional parking lot on the vacated lots. There is one house not owned by the church and they will still be providing access for the owner of that house to go north or south on 43rd Street.

Pearson confirmed with the applicant that they cannot provide parking on both sides of the street without vacating the street. Gergen's response was that it would require parallel parking if the street is not vacated, which is not the most convenient way to park and most citizens would choose not to parallel park. The vacation will allow more efficient 90 degree parking.

Pearson inquired as to what kind of assurances the city has that the church won't remove the street when it is vacated. Rick Peo, City Law Department, advised that when the property is vacated and conveyed to the church, the city will retain a public access easement over the vacated right-of-way to insure that the public can still use it.

There was no testimony in opposition.

Staff questions

Marvin recalled a previous vacation that closed a street that was not on the Consent Agenda. He asked staff to explain how it is determined whether an application goes on the Consent Agenda.

Greg Czaplewski of Planning staff explained that if the applicant agrees to the conditions of approval, and the staff is not aware of any opposition, the street vacation is placed on the Consent Agenda.

Carlson referred to Analysis #4 which addresses the public access easement; however, he does not see where it is listed in the conditions of approval. Rick Peo advised that the public access easement is an item that the Law Department takes care of when they prepare the deed conveying the property. It is standard procedure just like retaining utility easements. Thus, it does not need to be addressed specifically in the conditions of approval.

Carroll inquired whether there have been any conversations with the property owner next to this property. Czaplewski had not had any conversations with them; however, they were notified by the applicant.

Pearson referred to Condition #1.2, which requires the posting of a bond to remove the existing paving and street return. Is that just for the one house? Czaplewski explained that this condition refers to removing the paving in the part of the street that has been vacated and change the street return to a driveway return for their parking lot, and that would be done when they vacate the rest of 43rd Street.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

February 4, 2004

Taylor moved a finding of conformance, seconded by Marvin and carried 8-0: Carlson, Krieser, Marvin, Carroll, Taylor, Sunderman, Pearson and Bills-Strand voting 'yes'; Larson absent. This is a recommendation to the City Council.



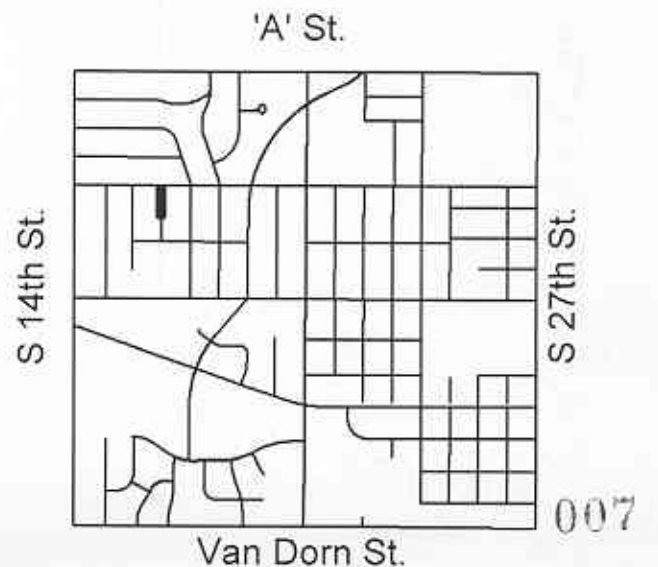
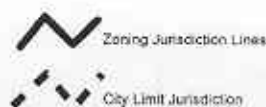
Street & Alley Vacation #04001 S 43rd & Sumner St.

2002 aerial

Zoning:

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

One Square Mile
Sec. 32 T10N R7E



Lincoln City - Lancaster County Planning Dept.

JAN -6 2004

**PETITION TO VACATE PUBLIC WAY
with
RELEASE AND WAIVER OF RIGHTS AND TITLE,
AND QUITCLAIM DEED TO CITY OF LINCOLN**

TO THE HONORABLE CITY COUNCIL OF THE CITY OF LINCOLN, NEBRASKA:

The undersigned property owner(s) hereby petition you to vacate the following street, alley, or other public way, commonly known as: (i.e.: Elm Street from 1st to 2nd St. or East-west alley, from the north line of 1st St. to the south line of 2nd St.)

South 43rd Street between the south line of Sumner Street and the south line of
the north half of lot 4, block 2, Woods Brothers Bryan Sumner Acres

in the CITY OF LINCOLN, NEBRASKA, with the City reserving in said street, alley, or other public way such title, rights, easements, and privileges as it may deem necessary. In consideration of the vacation of the above-described street, alley, or other public way, we, and each of us, for ourselves, our heirs, personal representatives, successors, and assigns, hereby waive and release any and all claims, causes of action, rights of access, and demands of every nature, known or unknown, which may accrue to us, or which we now have, or which we may hereafter have as a result of such vacation; and hereby quitclaim unto the City of Lincoln, Nebraska, and to its successors and assigns forever, all right, title, interest, estate, and demand, both at law and in equity, in and to all of said street, alley, or other public way.

TO HAVE AND TO HOLD the above-described street, alley, or other public way together with all tenements, hereditaments, and appurtenances thereto belonging unto the City of Lincoln, Nebraska, and to its successors and assigns forever.

The undersigned hereby represent(s) that he, she, they, or it is(are) the owner(s) of the following described property in Lincoln, Lancaster County, Nebraska, abutting on said street, alley, or other public way: (*Legal description from deed or abstract NOT street address, i.e. Lot 10, Block 500 Boardwalk Addition NOT 4500 Park Place Blvd.*)

North half of lot 9 and lots 10-12, block 1 Wood Bros. Bryan Sumner Acres

Lots 1-3 and north half of lot 4, block 2 Woods Bros. Bryan Sumner Acres

DATED this 13 day of DECEMBER, 2003.

CHRIST LUTHERAN CHURCH, LINCOLN, NEBRASKA, A NEBRASKA NONPROFIT CORPORATION

By: [Signature]
PRESIDENT

**(ALL TITLEHOLDERS OF THE ABOVE DESCRIBED REAL ESTATE MUST SIGN THIS PETITION
BEFORE A NOTARY PUBLIC – NOTARIAL ACKNOWLEDGMENTS ON REVERSE)**

(Individual(s) Acknowledgment):

STATE OF _____)
) ss.
_____ COUNTY)

JAN - 6 2004

The foregoing instrument was acknowledged before me on this _____ day of _____, 20____, by

(Please indicate name(s) and marital status of person(s) signing)

(Seal)

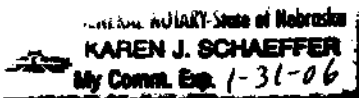
Notary Public

(Corporate Acknowledgment):

STATE OF Nebraska)
) ss.
Lancaster COUNTY)

The foregoing instrument was acknowledged before me on this 13th day of December, 2003, by
Thomas Lorenz, president of Christ Lutheran Church, on behalf of the corporation.

(Seal)



Karen J. Schaeffer
Notary Public

(Partnership Acknowledgment):

STATE OF _____)
) ss.
_____ COUNTY)

The foregoing instrument was acknowledged before me on this _____ day of _____, 20____, by
_____, general partner of _____, on behalf of the partnership.

(Seal)

Notary Public

(Limited Liability Company Acknowledgment):

STATE OF _____)
) ss.
_____ COUNTY)

The foregoing instrument was acknowledged before me on this _____ day of _____, 20____, by
_____, managing member of _____, on behalf of said limited
liability company.

(Seal)

Notary Public

INFORMATION SHEET

JAN - 6 2004

An Information Sheet must be filled out completely by the owners of each parcel abutting the requested vacation. The attached **Petition to Vacate Public Way** must also be filled out completely according to the instructions contained in the Instruction Sheet.

1. Name of Petitioner (Current Titleholder/s): Christ Lutheran Church

If more than one individual, indicate if you are:

_____ joint tenants with right of survivorship, OR _____ tenants in common

2. Petitioner's Address: 4325 Sumner St.

Lincoln, NE 68506

3. Petitioner's Telephone Number: (402) 483-7774

4. Name of street, alley, or other public way sought to be vacated: _____

South 43rd Street between the south line of Sumner Street and the south line of
the north half of lot 4, block 2 Woods Bros. Bryan Sumner Acres

5. Legal description of Petitioner's property which abuts the public way sought to be vacated: _____

North half of lot 9 and lots 10-12, block 1 Woods Bros. Bryan Sumner Acres

Lots 1-3 and north half of lot 4, block 2 Woods Bros. Bryan Sumner Acres

6. Why are you seeking to have this street, alley, or other public way vacated?

To expand and increase services of the Christ Lutheran Church

7. What use or uses do you propose to make of the public way should it be vacated?

The short term use would be to provide additional parking.

The mid to long-term use would be to provide a site for a permanent education building and parking.

8. Do you intend to purchase that portion of the vacated public way which abuts your property as described in the **Petition to Vacate Public Way** and/or other portions of the vacated public way?

X YES _____ NO

9. Name and address of person to whom tax statement should be sent:

Christ Lutheran Church

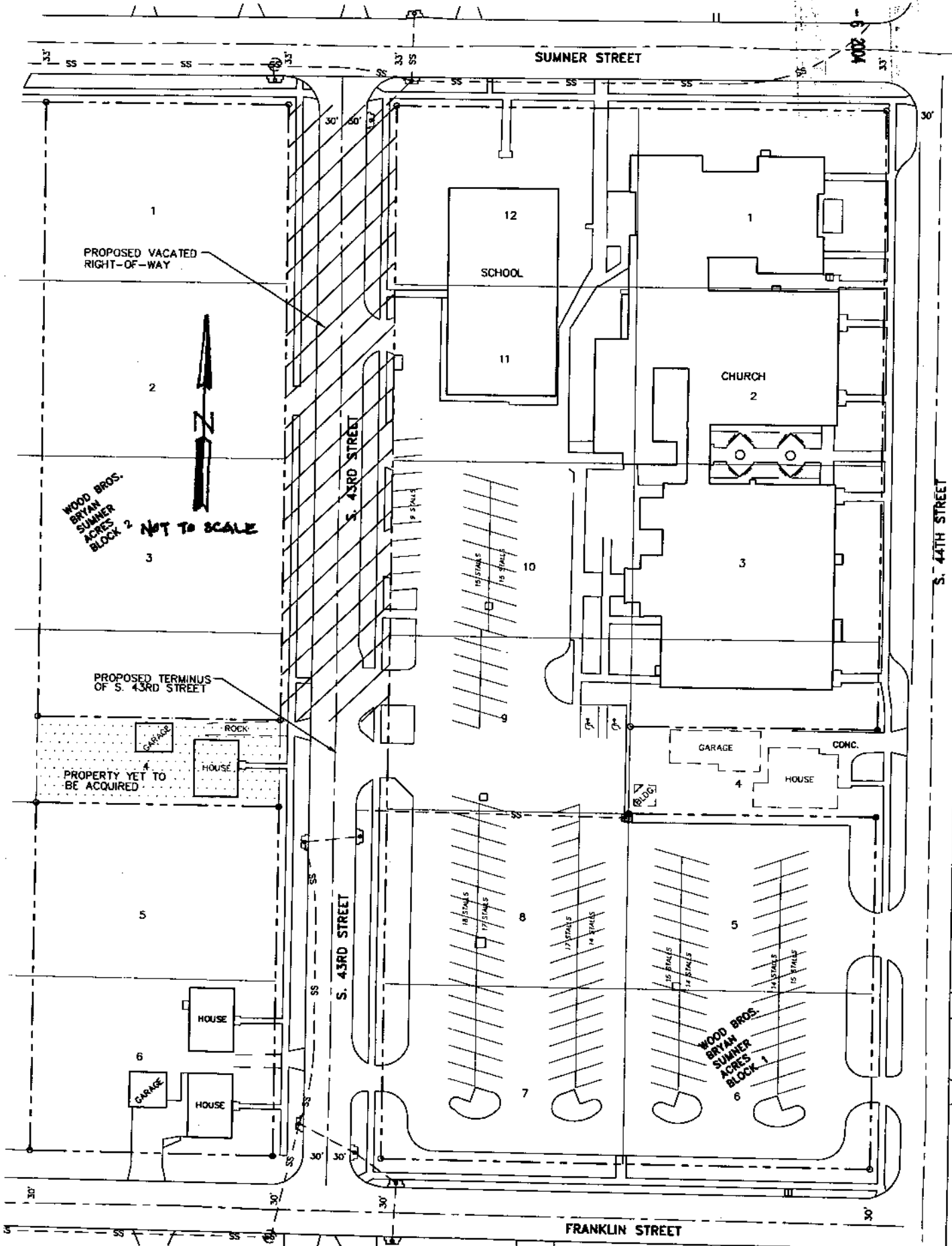
4325 Sumner St.

Lincoln, NE 68506

The property will be appraised and the purchase price of the portion abutting your property must be paid by you to the City Clerk unless you have indicated that the portion abutting your property will be sold to any other abutting owner willing to pay the purchase price. The Vacation Ordinance will not be introduced before the City Council until the full price of the entire public way proposed to be vacated has been paid.

***** IMPORTANT: BE SURE THAT THE PETITION TO VACATE PUBLIC WAY HAS BEEN PROPERLY EXECUTED BY ALL TITLEHOLDERS TO YOUR PROPERTY AND ATTACH IT TO THIS INFORMATION SHEET.**

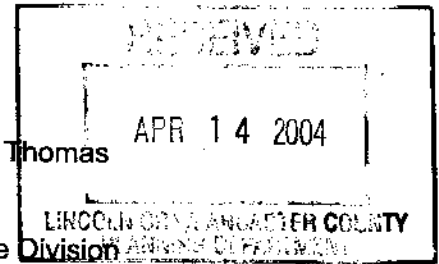
JAN - 6 2004



RIGHT-OF-WAY VACATION EXHIBIT

SAV.04001

INTEROFFICE MEMORANDUM



TO: Mayor Seng
& City Council Members

FROM: Clinton W. Thomas

DEPARTMENT: City Council Office

DEPARTMENT: Real Estate Division

ATTENTION:

DATE: April 13, 2004

COPIES TO: Joan Ross
Marvin Krout
Dana Roper
Byron Blum

SUBJECT: Vacation of South 43rd Street south
of Sumner Street

A request has been made to vacate South 43rd Street from Sumner Street south approximately 350 feet. Public Works has indicated the existence of sanitary sewer, storm sewer, and water mains within this area as well as the existence of electric and gas utilities and has requested easements remain in place over the entire area for these utilities. Since there are still houses remaining on 43rd Street between the area of the proposed vacation and Franklin Street, Public Works had asked a turn-around be constructed on the dead ended portion of 43rd Street at a cost of \$40,000. The applicant has intentions of acquiring the remaining houses along the west side of 43rd Street if they become available, and has offered to leave the roadway in place providing an access easement across it until such time as the remaining properties are acquired and a petition can be submitted to vacate the remaining portion of 43rd Street to Franklin Street.

If this were to happen, Public Works has indicated the public access easement can be relinquished and it is my understanding the sanitary sewer, storm sewer, and water line would be removed, or abandoned; and easements for those utilities could also be released. It is unknown whether the gas and electric utilities would need to remain in place, but it is not beyond the realm of possibility if these are distribution facilities they might also be abandoned, or removed. There is also the possibility of relocating them. The uncertainty of the vacation of the remainder of 43rd Street and when that might happen produces a rather speculative nature as to the value of the area of the street to be vacated. At the current time, the street right-of-way with all the utilities in place and a public access easement across it would have very little value other than the residual value of the land if the easements are removed. However, if all the easements are removed at a later date, the land would become buildable and would have a value equal to other land in the area.

It would seem that, if the area were to be vacated, it should be sold for a nominal amount with the imposition of utility easements over the entire area and a public access easement to allow passage from Franklin Street through to Sumner Street. It is recommended this be done and the value of the street be determined at the time the remaining portion of 43rd Street is vacated.

Therefore, it is recommended, if the area be vacated, it be done so with the retention of utility easements and a public access easement and an agreement be made with the abutting property owner to the effect they will pay a nominal amount of \$250 at this time with the balance to be determined upon the vacation of the remainder of that portion of 43rd Street south to Franklin Street when it can more precisely be determined what easements will remain and what affect they will have on the value of the area to be vacated.

Respectfully submitted,

Clinton W. Thomas
Certified General Appraiser #990023

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